

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES**

**TO PROVIDE a Statewide Learning Management System**

**ISSUED BY Office of Management and Budget  
Government Support Services**

**CONTRACT NUMBER GSS13689-LEARN\_MGT  
CONTRACT TITLE: Learning Management System**

**I. Overview**

The State of Delaware Office of Management and Budget, Government Support Services seeks proposals from qualified vendors for a Statewide Learning Management System. This request for proposals (RFP) is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: February 26, 2013
Questions Due By	Date: March 5, 2013
Answers to Questions Posted By:	Date: March 11, 2013
Deadline for Receipt of Proposals	Date: March 28, 2013 at 1:00 PM (EST)
Presentations by Selected Bidders:	Date: TBD
Notification of Award	Date: June 26, 2013

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3.) Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

**MANDATORY PREBID MEETING**

**A mandatory pre-bid meeting has not been established for this Request for Proposal.**

## **II. Scope of Services**

### **A. Background**

A Statewide Learning Management System (LMS) is sought for the State of Delaware to support the management, delivery, and tracking of online and classroom-based training for statewide and agency training development initiatives. Agency size varies from the largest with over 6,000 employees to very small with only a few employees. Currently, the State of Delaware maintains a decentralized training and development structure with the only centralized training and development provided by the Office of Management and Budget, Human Resource Management Training and Organization Development Section. This function supports training for approximately 18,000 employees throughout the State of Delaware. In addition, there are 16 executive branch agencies and the courts, and approximately 15 different stand-alone systems that are used to maintain more customized training specific to the various agencies.

In addition to the training provided to employees, State agencies also provide training to over 25,000 external learners, annually, including healthcare professionals, firefighters, police, other first responders, contractors, and families of individuals receiving services from the state. The training provided by the state to external learners is primarily to meet federal and state mandates and to assist key stakeholders in obtaining mandatory training required to keep current in their positions.

The requirement is for all learners to have access to online course catalogs, and access to training through a learner-focused, self service system that enables learners and managers to search, enroll, request and launch any type of learning activity. And, supervisors and managers to have access to their employees' training records to link to performance and career development plans. The objectives for the statewide LMS are to:

- Implement Software as a Service (SaaS) statewide LMS solution that provides the best value to the State of Delaware.
- Manage the implementation of the statewide LMS solution in a way that mitigates risk, optimizes limited resources, and is economically feasible.
- Enable the State of Delaware to efficiently manage training for internal and external learners in a cost-effective system that advances in the performance of the state through training and education, while eliminating duplicative efforts across state agencies.

The detailed Functional Requirements are found in Appendix A3 – A7 of this RFP.

### **B. Expectations**

The State of Delaware, Office of Management and Budget (OMB) is looking for a vendor who currently has existing enterprise LMS solution that meets the general intent of the State of Delaware requirements. As part of the scope of services, the awarded Vendor will be required to do the following:

1. Develop and refine a detailed project plan that is consistent with the State of Delaware project methodology and consistent with industry best practices for project management, as set forth by Project Management Institute (PMI). The Vendor must use the following project phase names in the vendor plan, to maintain consistency with the State of Delaware phase names: Planning & Design, Execution & Build, Implementation, and Closeout.

2. Work with the State of Delaware, OMB team and extended stakeholders to refine the business processes and requirements and document these processes and requirements in updated documentation. The Vendor may choose to use their staff or a third party partner to deliver these services. It is anticipated that the refining of the processes will continue beyond the installation of the tool, if this will leverage the inherent capabilities of the tool to form the final business processes and requirements.
3. Configure and deploy the Statewide LMS solution, per the agreed upon requirements and design documentation.
4. Provide training and knowledge transfer to foster user adoption of the Statewide LMS solution and ensure that the human resource departments statewide are fully able to utilize the new capabilities.
5. Implement the system first through a limited production roll out and subsequently a statewide roll out. This approach will help ensure that the system meets the expectations before it is implemented more broadly.
6. Upon receipt of notice of termination of this Agreement, the Vendor shall provide timely, accurate records and materials to the State, and make personnel available to answer questions that arise, and otherwise cooperating with the Office of Management and Budget's reasonable requests in compliance with item eight of Attachment 13 – Terms and Conditions for Cloud Providers.

The awarded Vendor team will be led by a Project Manager who has strong communication skills, excellent project planning and execution experience, and proven skills in leading project management teams to a successful solution implementation. The Vendor Project Manager will work directly with the Office of Management and Budget Core Project Team. The full Vendor team shall include personnel with skills in process and requirements facilitation and documentation; thorough knowledge of the enterprise LMS solution from both a functionality and technical architecture standpoint; and skills to perform effective training and mentoring. The State of Delaware expects the Vendor to be available onsite as needed through the completion of the project implementation. The State of Delaware does not expect the work described to be conducted sequentially; concurrent work on the appropriate activities and deliverable is expected where the opportunity exists.

### **III. Required Information**

The following information shall be provided simultaneous with the execution of the formal contract award. Failure to provide the minimum requirements below may result in rejection of the proposal at the sole discretion of the State.

#### **A. Minimum Requirements**

1. Delaware business license:  
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Insurance:  
Certificate of such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows.

a.	Commercial General Liability	\$1,000,000 per occurrence and \$3,000,000 aggregate
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And at least one of the following, as outlined below:

b.	Medical Liability	\$1,000,000/\$3,000,000
c.	Misc. Errors and Omissions	\$1,000,000/\$3,000,000
d.	Product Liability	\$1,000,000/\$3,000,000

The successful vendor must carry (a) as well as at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

**B. General Evaluation Requirements**

1. **Experience and Reputation** – This factor will be used to evaluate the vendor’s capability to deliver proven enterprise LMS solutions for organizations of comparable scope and complexity as the State of Delaware. The evaluation includes past performance, key personnel with demonstrated expertise in the defined areas. Vendors must provide brief biographical summaries and professional qualifications of key professionals proposed for this project.
2. **Support and Maintenance** – This factor will be used to evaluate the vendor’s technical support and maintenance plan. The evaluation includes vendor’s technical support, end user support, approach to ongoing maintenance and upgrades, business continuity, and ongoing training.
3. **Response to Technical Requirements** – This factor will be used to evaluate how well the vendor solution can meet the functional requirements in terms of system features, communication and collaboration, resource and content management, e-commerce, tracking and scheduling, reporting and analysis, system administration, and user experience.
4. **Implementation Plan** – This factor will be used to evaluate the vendor’s approach to planning, executing and controlling the implementation of the project. The vendor will be evaluated on its risk management plan, milestones, resourcing and general approach to project management and will consist of subcategories of solution implementation, user adoption, and training.
5. **Reliability and Security Processes** – This factor will be used to evaluate the vendor’s architectural approach, openness, security and scalability. The evaluation includes architecture and information security, including the ability of the vendor to manage roles and permissions and protecting the application and data integrity.

6. **Data Handling** – This factor will be used to evaluate the vendor’s plan for data interfaces and maintaining integrity/accuracy of the data.
7. **Price Proposed** – An evaluation of each vendor’s cost proposal will be conducted.

**C. Technical Standards and Security Requirements**

**1. Acknowledgement Required**

**TERMS AND CONDITIONS:**

The State of Delaware is taking a very deliberate approach to cloud-based engagements because of concerns around the protection of our data, access control, and the lack of mature standards in the industry. It is for this reason that explicit details of the cloud solutions are required, including an item-by-item acknowledgement from the candidate vendor. **Proposals must contain Attachment 13 – Acknowledgement of the Terms and Conditions for Cloud Contracting and External Hosting. All of the T&C must be signed and only the SOW that the solution accommodates should be signed.**

**CONFIDENTIALITY AND DATA INTEGRITY:**

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

The Contractor is required to agree to the requirements in the **CONFIDENTIALITY AND INTEGRITY OF DATA STATEMENT**, attached, and made a part of this RFP. Contractor employees, individually, may be required to sign the statement prior to beginning any work.

**SECURITY:**

Computer, network, and information security is of paramount concern for the State of Delaware and the Department of Technology and Information. The State wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. The SANS Institute and the FBI have released a document describing the Top 20 Internet Security Threats. The document is available at [www.sans.org/top20.htm](http://www.sans.org/top20.htm) for your review. The Contractor is guaranteeing that any systems or software provided by the Contractor are free of the vulnerabilities listed in that document.

The awarded vendor shall maintain network security policy compliance in accordance with Secure File Transport to secure data classified as confidential or higher per the Data Classified Policy when moving data. References to the policy documents are provided in Section III. C. 2.

Electronic information storage devices (hard drives, tapes, diskettes, compact disks, USB, multifunction peripherals, etc) shall be disposed of in a manner compliant to Delaware Department of Technology and Information policy DTI-005.01, Disposal of Electronic Equipment/Storage Media. Reference to the policy document is provided in Section III.C.2.

**CYBER SECURITY LIABILITY:**

It shall be the duty of the Vendor to assure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by the State of Delaware. Vendor's agreement shall not limit or modify liability for information security breaches, and Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, the State shall subtract from any payment made to Vendor all damages, costs and expenses caused by such information security breaches that have not been previously paid to Vendor.

**2. Architectural Documentation Requirements**

- a. **Network Diagram** - A network diagram of the proposed solution is required that clearly documents the user's interaction with the solution and the State. The network diagram should follow the example include in Attachment 14 – Network Diagram Template.
- b. **Software Inventory** - A software inventory of the proposed solution is required that list any software **that the State needs**. For example, a certain web browser (IE) or web service technology for an interface. Software inventories should use the format include in Attachment 15 – Software Inventory Template.
- c. **Database Dictionary or Data model** - A data dictionary OR a conceptual data model for state-owned business data must be provided to the state. The data dictionary or conceptual data model does not have to be submitted with a vendor response to this RFP, but must be submitted once the design of the solution is complete or prior to implementation of the solution. The submitted data dictionary or conceptual data model must include at least the following items: entity names and descriptions, entity relationships and descriptions, attribute names, attribute descriptions, attribute data type, attribute lengths, and primary identifier for each entity.

Data dictionaries must be submitted in Excel or in a .csv file. The directions for how to format the Excel workbook is explained in the first section of the [Data Model Samples document](#). If a data model is submitted, it must be in either Sybase PowerDesigner or CA ERwin format. Any submission by a vendor to comply with these requirements that necessarily includes data that the vendor wishes to claim as proprietary must be submitted and labeled "Proprietary Information" with the RFP/Contract number. The envelope must contain a letter from the Vendor's legal counsel describing the

documents in the envelope, representing in good faith that the information in each document is not “public record” as defined by 29Del. C. § 10002(d), and briefly stating the reasons that each document meets the said definitions. The vendor's counsel must also acknowledge what elements of the submission are not claimed as proprietary and are subject to release upon request. Additional guidance is in Attachment 16 - Requirements for Submission of a Data Dictionary or Data Model.

### 3. **Mandatory Standards**

The following State of Delaware technology standards and/or policies have been identified as being related to this solution:

- a. Website Common Look and Feel  
<http://dti.delaware.gov/pdfs/pp/WebsiteCLF.pdf>
- b. Data Classification Policy  
<http://dti.delaware.gov/pdfs/pp/DataClassificationPolicy.pdf>
- c. Data Management Policy  
<http://dti.delaware.gov/pdfs/pp/DataManagementPolicy.pdf>
- d. State of Delaware Information Security Policy (DISP)  
<http://dti.delaware.gov/pdfs/pp/DelawareInformationSecurityPolicy.pdf>
- e. Secure File Transport  
<http://dti.delaware.gov/pdfs/pp/SecureFileTransport.pdf>
- f. Strong Password Standard  
<http://dti.delaware.gov/pdfs/pp/StrongPasswordStandard.pdf>
- g. Web Application Security  
<http://dti.delaware.gov/pdfs/pp/WebApplicationSecurity.pdf>
- h. Terms and Conditions for Cloud Contracting and External Hosting  
<http://dti.delaware.gov/pdfs/pp/Cloud-External-Hosting.pdf>
- i. Data Modeling Standard  
<http://dti.delaware.gov/pdfs/pp/DataModelingStandard.pdf>
- j. Disposal of Electronic Equipment and Storage Media Policy  
<http://dti.delaware.gov/pdfs/pp/DisposalOfElectronicEquipmentAndStorageMedia.pdf>
- k. Data Center Policy  
<http://dti.delaware.gov/pdfs/pp/DataCenterPolicy.pdf>
- l. Data Integration Standard  
<http://dti.delaware.gov/pdfs/pp/DataIntegrationStandard.pdf>

## IV. Professional Services RFP Administrative Information

### A. RFP Issuance

#### 1. Obtaining Copies of the RFP

This RFP is available in electronic form only through the State of Delaware Procurement website at <http://bids.delaware.gov>. Paper copies of this RFP will not be available.

#### 2. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* § 6981.

#### 3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

#### 4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

**Michael Bacu**  
**Government Support Services**  
**100 Enterprise Place / Suite 4**  
**Dover, DE 19904**  
[michael.bacu@state.de.us](mailto:michael.bacu@state.de.us)

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

#### 5. Consultants and Legal Counsel

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

#### 6. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

**7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

**8. Exclusions**

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a) Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b) Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
  - 1. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 2. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts
- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

**B. RFP Submissions**

**1. Acknowledgement of Understanding of Terms**

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

**2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any

non-responsive or non-conforming proposals. Each proposal must be submitted with two (2) paper copies and one (1) electronic copy on CD.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **1:00 PM EST** on **03/28/2013**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**State of Delaware  
Government Support Services  
100 Enterprise Place, Suite 4  
Dover, DE 19904**

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **1:00 PM EST** on **03/28/2013**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

**3. Technical Proposal Content and Organization**

The proposal should be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. Each page should be numbered. The proposal should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the vendor's proposal.

If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Proposals will be considered and evaluated based upon the vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.

The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated. Attachment 12 includes a list of the minimum mandatory submission requirements.

**Letter of Transmittal/Cover Letter** – Each proposal must be accompanied by a letter of transmittal that is signed by a representative who has the legal capacity to enter the organization into a format contract with Government Support Services (GSS) and provides the following information:

1. Contract number (GSS 13689-LEARN\_MGT)
2. Submitting Organization's Name (Vendor)

3. Identify the name, title, telephone and fax number and email address of the person authorized to contractually obligate the organization.
4. Name, title, telephone and fax number, and email address of person authorized to negotiate the contract on behalf of the organization.
5. Name, title, telephone and fax number, and email address of contact person for proposal clarification.
6. Acknowledge receipt of any and all amendment to this RFP.

**Table of Contents** – clearly identifying the structure of the proposal and showing page numbers for each of the required sections and attachments.

**Section A-1: Executive Summary** - Provide a high-level executive summary consistent with other sections of the proposal.

**Section A-2: Experience and Reputation** - Describe corporate capability to deliver the proposed LMS including stability, past performance, key personnel with demonstrated expertise in the defined areas. Include brief biographical summaries and professional qualifications of key personnel and subcontractors and/or consulting partners. Include list of references, Attachment 5, in this section.

**Section A-3: Support and Maintenance** - Describe the approach for support and maintenance by addressing the factors below and reference to the appropriate requirements. Respond to requirements in Appendix A-3 and include the vendor's service level agreement.

- a. Technical support
- b. End user support
- c. Maintenance plan
- d. Business continuity
- e. Ongoing training

**Section A-4: Response to LMS Functional Training Requirements** - Describe the system functionality, detailed technical specifications in Appendix A, will be met. Describe key functionality within the system, with screen shots and other information as appropriate to demonstrate completeness of the solution, ease of use, and system administration. Respond to requirements in Appendix A-4.

**Section A-5: Implementation Plan** - Describe the vendor's and key partners/subcontractors project management planning and execution credentials, capabilities and approach, as used for similar projects. Also, include an initial, high-level plan that includes milestones/schedule, risk and scope management, resource management, quality management and general project management approach; include samples. Respond to Appendix A-5 and provide the approach for:

- Solution implementation
- User adoption
- Training

**Section A-6: Reliability and Security Processes** - Describe the technical approach, addressing architecture and security factors and reference to appropriate requirements and respond to Appendix A-6:

- a. Openness
- b. Security
- c. Scalability

Include a completed Contractor Confidentiality (Non-disclosure) and Integrity of the Data Agreement, Attachment 11, 13 – 16, and all requirements in Section III.C Technical Standards & Security Requirements.

**Section A-7: Data Handling** - Describe the approach to link with the State's existing PeopleSoft Enterprise Resource Planning (ERP) systems: the Human Capital Management system, "Payroll Human Resources Statewide Technology" (PHRST) and the accounting system, "First State Financials" (FSF). Describe data extraction from different LMS solutions across the State, importing existing data into the proposed solution and the approach to maintaining the integrity/accuracy of the data, and web page development and maintenance. The vendor must also describe their approach for returning data to the State at the end of engagement. Respond to Appendix A-7

**Section B: Cost Proposal**

- Cost proposal matrix, Appendix B. The vendor must complete the Cost Proposal Matrix.
- Include additional services or pricing on a separate page attached to Appendix B including external learner pricing.

**Other Attachments:**

**Attachment 2: Non-Collusion Statement** – include one (1) complete, signed, and notarized copy of the non-collusion agreement. This form must have original signatures and notary mark.

**Attachment 3: Exceptions** – include one (1) completed Exceptions form. This form must be provided even if no exceptions are taken.

**Attachment 4: Confidentiality and Proprietary Information** – include one (1) completed Confidentiality and Proprietary Information form. This form must be provided even if no confidential content is cited.

**Attachment 6: Subcontractor Information** – include one (1) completed and signed copy of the Subcontractor Information form for each subcontractor, if applicable.

**Attachment 9: Employing Delawareans** - include one (1) completed Employing Delawareans report.

**Attachment 10: Office of Supplier Diversity Application** – include one (1) completed Office of Supplier Diversity (OSD) application, if applicable.

Each item listed above will provide the basis for evaluating each vendor's proposal. Failure to provide all appropriate information (in detail) may deem the submitting vendor as "non-responsive" and exclude the vendor

from further consideration. If an item listed above is not applicable to your proposal, please make note in your submission package.

**4. Proposal Modifications**

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

**5. Proposal Costs and Expenses**

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

**6. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through the initial contract term. The State of Delaware reserves the right to ask for an extension of time if needed.

**7. Late Proposals**

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

**8. Proposal Opening**

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

**9. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

**10. Concise Proposals**

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner as outlined in Section 3. Unnecessarily elaborate

brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

**11. Realistic Proposals**

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

**12. Confidentiality of Documents**

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

### 13. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the “**prime contractor**”. The “**prime contractor**” must be the joint venture’s contact point for the State of Delaware and be responsible for the joint venture’s performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendors’ systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

#### a. Primary Vendor

The State of Delaware expects to negotiate and contract with only one “prime vendor”. The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

#### b. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

**c. Multiple Proposals**

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

**14. Sub-Contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

**15. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening, but no later than March 18, 2013. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals, but no later than March 18, 2013.

**a. RFP Question and Answer Process**

The State of Delaware will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State's website at <http://bids.delaware.gov> by the date of **03/11/2013**. Vendors' names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Question

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

**16. State's Right to Reject Proposals**

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

**17. State's Right to Cancel Solicitation**

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

**18. State's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* § 6986, the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

**19. Notification of Withdrawal of Proposal**

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

**20. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at <http://bids.delaware.gov>. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

**21. Exceptions to the RFP**

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

**22. Award of Contract**

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

**a. RFP Award Notifications**

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

**C. RFP Evaluation Process**

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in, a timely manner, any and all information that the State of Delaware may deem necessary to make a decision.

**1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team may

negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Office of Management and Budget, Government Support Services, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful vendor in the best interests of the State of Delaware.

**2. Proposal Selection Criteria**

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor’s proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team’s consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.

**a. Criteria Weight**

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

<b>Criteria</b>	<b>Weight</b>
<b>Vendor Staff Experience &amp; Reputation</b>	<b>90</b>
<b>Vendor Support and Maintenance</b>	<b>150</b>
<b>Vendor response to Technical Requirements</b>	<b>250</b>
<b>Vendor Implementation Plan</b>	<b>100</b>

Criteria	Weight
<b>Vendor Reliability and Security Processes</b>	<b>60</b>
<b>Vendor approach to Data Handling</b>	<b>150</b>
<b>Pricing Structure</b>	<b>200</b>
<b>Total</b>	<b>1000</b>

**3. Proposal Clarification**

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

**4. References**

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

**5. Oral Presentations**

Selected vendors may be invited to make oral presentations/demonstrations to the Evaluation Team. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

**D. Contract Terms and Conditions**

**1. General Information**

- a. The term of the contract between the successful bidder and the State shall be for a three (3) year period from July 1, 2013 through June 30, 2016. Each contract may be renewed for two (2) one (1) year periods through negotiation between the Vendor and Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the termination of the contract.
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to

review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.

- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

## **2. Collusion or Fraud**

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the

opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

**3. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

**4. Solicitation of State Employees**

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

**5. General Contract Terms**

**a. Independent contractors**

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability

whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware shall provide working space and sufficient supplies and material to augment the Contractor's services.

**b. Non-Appropriation**

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

**c. Licenses and Permits**

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department or through the following website. <https://onestop.delaware.gov/osbrpublic/Home.jsp>

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

**d. Notice**

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**Contract Administrator  
Contract No. GSS13689-LEARN\_MGT  
Government Support Services  
100 Enterprise Place, Suite 4  
Dover, DE 19904**

**e. Indemnification**

**1. General Indemnification**

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract.

**2. Proprietary Rights Indemnification**

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- (a)** Procure the right for the State of Delaware to continue using the Product(s);
- (b)** Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- (c)** Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

**f. Insurance**

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
3. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Commercial General Liability	\$1,000,000 per occurrence and \$3,000,000 aggregate
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And at least one of the following, as outlined below:

b.	Medical Liability	\$1,000,000/\$3,000,000
c.	Misc. Errors and Omissions	\$1,000,000/\$3,000,000
d.	Product Liability	\$1,000,000/\$3,000,000

The successful vendor must carry (a) as well as at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

4. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.
5. Forty-five (45) day's written notice of cancellation or material change of any policies is required.

Administrator, Government Support Services  
Contract No. GSS13689-LEARN\_MGT  
State of Delaware  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202

**Note: The State of Delaware shall not be named as an additional insured.**

**g. Performance Requirements**

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

**h. Warranty**

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements

**i. Costs and Payment Schedules**

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

**j. Penalties**

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.

**k. Termination for Cause**

If for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying thirty (30) days notice and a right to cure. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

**I. Termination for Convenience**

The State of Delaware may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware. If the contract is terminated by the State of Delaware as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

**m. Non-discrimination**

In performing the services subject to this RFP the vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

**n. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**o. Vendor Activity**

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to

adhere to this requirement is cause for elimination from future consideration.

**p. Work Product**

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

**q. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

**r. Applicable Law**

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- (1) The laws of the State of Delaware;
- (2) The applicable portion of the Federal Civil Rights Act of 1964;
- (3) The Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- (4) A condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- (5) That programs, services, and activities provided to the general public under resulting contract conform to the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

**s. Scope of Agreement**

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

**t. Other General Conditions**

- (1) Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- (2) Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- (3) Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- (4) Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- (5) Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- (6) Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.

- (7) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- (8) **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

**E. RFP Miscellaneous Information**

**1. No Press Releases or Public Disclosure**

Vendors may not release any information about this RFP. The State of Delaware reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the State of Delaware.

**2. Definitions of Requirements**

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

**F. ATTACHMENTS**

- Attachment 1 – No Proposal Reply Form
  - Attachment 2 – Non-Collusion Statement
  - Attachment 3 – Exceptions
  - Attachment 4 – Confidentiality and Proprietary Information
  - Attachment 5 – Business References
  - Attachment 6 – Subcontractor Information Form
  - Attachment 7 – Monthly Usage Report
  - Attachment 8 – Subcontracting (2<sup>nd</sup> Tier Spend) Report
  - Attachment 9 – Employing Delawareans Report
  - Attachment 10 – Office of Supplier Diversity Application
  - Attachment 11 – Confidentiality and Integrity of Data Agreement
  - Attachment 12 – Minimum Mandatory Proposal Requirements
  - Attachment 13 – Terms and Conditions for Cloud Contracting and External Hosting
  - Attachment 14 – Network Diagram Template
  - Attachment 15 – Software Inventory Template
  - Attachment 16 – Requirements for Submission of a Data Dictionary or Data Model
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- Appendix A – Functional Requirements (separate files)
    - A-3: Support & Maintenance
    - A-4: LMS Functional Training Requirements
    - A-5: Implementation Plan
    - A-6: Reliability & Security
    - A-7: Data Handling

### **IMPORTANT – PLEASE NOTE:**

- **Attachments 2, 3, 4, 5, 9, 11, 13 – 16, Appendix A3 through A7 and Appendix B must be addressed and included in your proposal.**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting

### **3. REQUIRED REPORTING:**

One of the primary goals in administering this contract is to keep accurate records regarding its actual value. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested bidders.

A Monthly Usage Report (Attachment 7) shall be furnished on the 15<sup>th</sup> (or next business day after the 15<sup>th</sup> day) of each month by the successful Vendor **Electronically in Excel format** detailing the purchasing of all items on this contract. The Monthly Usage Reports shall be submitted electronically in Excel and sent as an attachment to [vendorusage@state.de.us](mailto:vendorusage@state.de.us). It shall contain the six-digit department and organization code. Any exception to this mandatory requirement may result in cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 14 and 29 – Increasing Supplier Diversity Initiatives within State Government and Ensuring Representation of Veteran-Owned Businesses..., the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to report on the participation by a minority, woman, or veteran owned business (Diversity Supplier) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, or veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council). The format used for this Subcontracting 2<sup>nd</sup> Tier report is found below (Attachment 8).

Subcontracting 2nd tier reports (Attachment 8) shall be submitted to the contracting Agency’s OSD at [vendorusage@state.de.us](mailto:vendorusage@state.de.us) on the 15<sup>th</sup> (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

Employing Delawareans report, as required by House Bill # 410 (Bond Bill) of the 146<sup>th</sup> General Assembly and under Section 30, no bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of employment of Delawareans as found below (Attachment 9).

NO PROPOSAL REPLY FORM

**CONTRACT # GSS13689-LEARN\_MGT**  
**CONTRACT TITLE: Learning Management System**

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- \_\_\_\_\_ 1. We do not wish to participate in the proposal process.
- \_\_\_\_\_ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 3. We do not feel we can be competitive.
- \_\_\_\_\_ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
- \_\_\_\_\_ 5. We do not wish to sell to the State. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 6. We do not sell the items/services on which Proposals are requested.
- \_\_\_\_\_ 7. Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_ We wish to remain on the Vendor's List **for these goods or services.**

\_\_\_\_\_ We wish to be deleted from the Vendor's List **for these goods or services.**

**CONTRACT NO.:** GSS13689-LEARN\_MGT  
**TITLE:** Learning Management System  
**OPENING DATE:** March 28, 2013 at 1:00pm (Local Time)

**NON-COLLUSION STATEMENT**

This is to certify that the undersigned bidder has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid submitted this date to Government Support Services.

It is agreed by the undersigned bidder that the signed delivery of this bid represents the bidder's acceptance of the terms and conditions of this Invitation to Bid including all specifications and special provisions.

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Government Support Services.

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

COMPANY NAME \_\_\_\_\_ (Check one)

NAME OF AUTHORIZED REPRESENTATIVE  
 (Please type or print) \_\_\_\_\_

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE LICENSE NUMBER \_\_\_\_\_

	(circle one)			(circle one)			(circle one)			(circle one)		
COMPANY CLASSIFICATIONS: CERT. NO. _____	<u>Women</u> <u>Business</u> <u>Enterprise</u> <u>(WBE)</u>	Yes	No	<u>Minority</u> <u>Business</u> <u>Enterprise</u> <u>(MBE)</u>	Yes	No	<u>Disadvantaged</u> <u>Business</u> <u>Enterprise</u> <u>(DBE)</u>	Yes	No	<u>Veteran</u> <u>Business</u> <u>Enterprise</u> <u>(VBE)</u>	Yes	No

[The above table is for information and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:  
 (COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

**THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED FOR YOUR BID TO BE CONSIDERED**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_





**CONTRACT NO. GSS13689-LEARN\_MGT**  
**Contract Name: Learning Management System**

## **Business References**

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please list the contract.

1. Business Name/Mailing Address:  
Contact Name/Phone Number:  
Number of years doing business with :  
Describe type of work performed:
  
2. Business Name/Mailing Address:  
Contact Name/Phone Number:  
Number of years doing business with :  
Describe type of work performed:
  
3. Business Name/Mailing Address:  
Contact Name/Phone Number:  
Number of years doing business with :  
Describe type of work performed:

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO. GSS13689-LEARN_MGT	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OMWBE Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
9a. NAME OF PERSON SIGNING	10. BY ( <i>Signature</i> )	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

\* Use a separate form for each subcontractor





**EMPLOYING DELAWAREANS REPORT**

As required by House Bill # 410 (Bond Bill) of the 146<sup>th</sup> General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: \_\_\_\_\_
2. Number and percentage of such employees who are bona fide legal residents of Delaware:  
\_\_\_\_\_
- Percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_
3. Total number of employees of the bidder: \_\_\_\_\_
4. Total percentage of employees who are bona fide resident of Delaware: \_\_\_\_\_

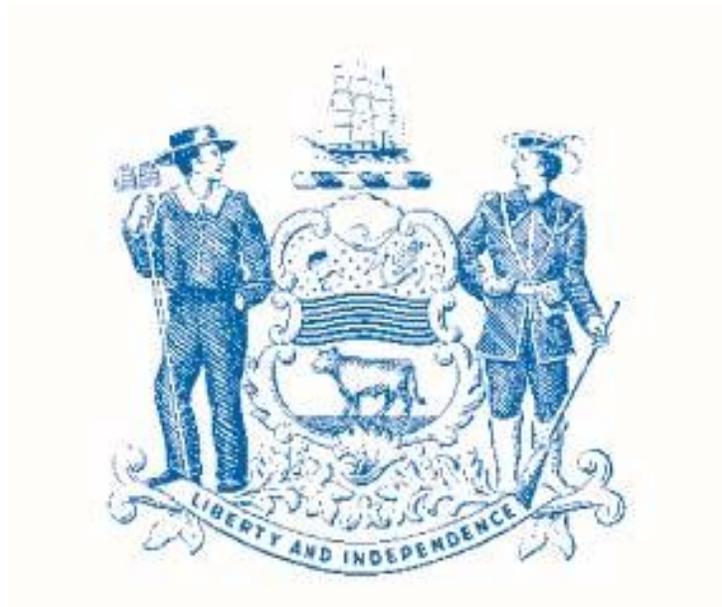
If subcontractors are to be used:

1. Number of employees who are residents of Delaware: \_\_\_\_\_
2. Percentage of employees who are residents of Delaware: \_\_\_\_\_

**“Bona fide legal resident of this State” shall mean any resident who has established residence of at least 90 days in the State.**

**State of Delaware**  
**Office of Supplier Diversity**  
**Certification Application**

The most recent application can be downloaded from the following site:  
<http://gss.omb.delaware.gov/osd/certify.shtml>



**Complete application and mail, email or fax to:**

Office of Supplier Diversity (OSD)  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202  
Telephone: (302) 857-4554 Fax: (302) 677-7086  
Email: [osd@state.de.us](mailto:osd@state.de.us)  
Web site: <http://gss.omb.delaware.gov/osd/index.shtml>



State of Delaware

**DEPARTMENT OF TECHNOLOGY AND INFORMATION**

William Penn Building  
801 Silver Lake Boulevard  
Dover, Delaware 19904

**Contractor Confidentiality (Non-Disclosure) and Integrity of Data Agreement**

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of \_\_\_\_\_ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature \_\_\_\_\_

Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

## **MINIMUM MANDATORY SUBMISSION REQUIREMENTS**

Each bidding vendor is requested to provide two (2) paper copies and one (1) electronic copy of their bid submission package. One paper (1) copy must be marked as "ORIGINAL" and have original signatures where appropriate. The second paper submission should be marked copy, and does not have to have original signatures. The one (1) electronic copy shall be a scanned version of the entire vendor's proposal and shall be saved to CD or other electronic media device.

The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated. Narrative explanations are expected as to how the Vendor can meet the requirements described in RFP Section III.C – Technical Standards and Security Requirements, and Attachments 12 – 17, RFP Section III.B and Section IV.B.3 - Technical Proposal Content and Organizations and for each section (c through k below), and in the Appendix A3 through A7.

- (a) Brief Vendor Cover Letter. The letter shall be signed by a representative who has the legal capacity to enter the organization into a formal contract with Government Support Services.
- (b) Table of Contents clearly identifying the structure of the proposal and showing page numbers for each of the required sections.
- (c) Section A-1: Executive Summary
- (d) Section A-2: Experience and Reputation (Include Attachment 5)
- (e) Section A-3: Support and Maintenance
- (f) Section A-4: Response to Technical Requirements
- (g) Section A-5: Implementation Plan
- (h) Section A-6: Reliability and Security Processes
- (i) Section A-7: Data Handling
- (j) Section B: Cost Proposal
- (k) Financial information (balance sheets and income statements) for the past three years
- (l) Acknowledgement and responses to all requirements in Section III, C. Technical Standards and Security Requirements (See pages 5 through 7 of this RFP for descriptions).
- (m) One (1) complete, signed and notarized copy of the non-collusion agreement (Attachment 2). **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.**
- (n) One (1) completed Exceptions form (Attachment 3): This form must be provided even if no exceptions are taken.
- (o) One (1) completed Confidentiality and Proprietary Information form (Attachment 4): This form must be provided even if no confidential content is cited.
- (p) One (1) complete and signed copy of the Subcontractor Information Form (Attachment 6) for each subcontractor – if applicable.
- (q) One (1) completed Employing Delawareans Report (Attachment 9).
- (r) One (1) completed OSD application (see link on Attachment 10) – if applicable.

- (s) One (1) signed copy of the Contractor Confidentiality (Non-Disclosure) and Integrity of Data Agreement (Attachment 11)
- (t) One (1) signed copy of the completed and signed Terms and Conditions for Cloud Contracting and External Hosting (Attachment 13).
- (u) One (1) copy of the network diagram that documents the user's interaction with the solutions and any other interfaces (Template found in Attachment 14).
- (v) One (1) completed Software Inventory of the proposed solutions (Attachment 15).

Each item listed above will provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information (in detail) may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

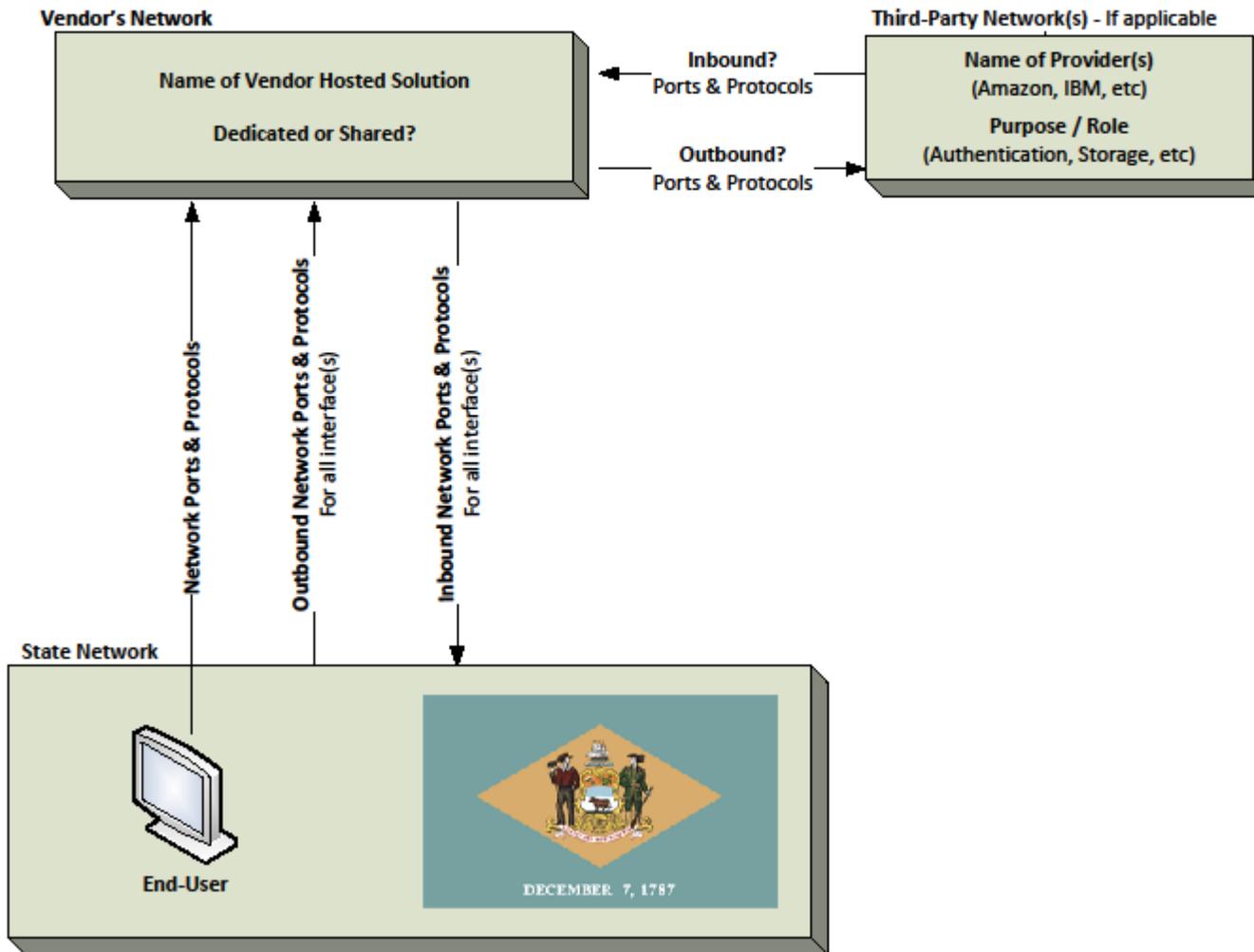
**Terms and Conditions for Cloud Providers  
As of May 17, 2011**

No.	Doc	Item	Acknowledgement
1	T&C	<p>Ownership of Information The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract.</p>	
2	T&C	<p>Privacy of Information Protection of personal privacy must be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate use of State of Delaware information at any time. To this end, the Service Provider shall comply with the following conditions: Personal information obtained by the Service Provider will become and remain property of the State of Delaware. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware. The Service Provider may not use any personal information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.</p>	
3	T&C	<p>When requested by the State of Delaware, the provider must destroy all requested data in all of its forms, disk, CD / DVD, tape, paper, for examples. Data shall be destroyed according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction must be provided to the State of Delaware.</p>	
4	T&C	<p>The Service Provider shall not store or transfer State of Delaware data outside of the United States.</p>	
5	T&C	<p>The Service Provider must inform the State of Delaware of any security breach or detection of any suspicious intrusion that is or has occurred that jeopardizes the State of Delaware data or processes. This notice must be given to the State of Delaware within 24 hours of its discovery. Full disclosure of the assets that might have been jeopardized must be made. In addition, the Service Provider must inform the State of Delaware of the actions it is taking or will take to reduce the risk of further loss to the State. If the breach requires public notification, all communication shall be coordinated with the State of Delaware.</p>	
6	T&C	<p>The Service Provider must encrypt all non-public data in transit to the cloud. In addition, the Service Provider will comply with the ISO/IEC 27001 standard for information security management systems, providing evidence of their certification or pursuit of certification.</p>	
7	T&C	<p>The Service Provider shall disclose to the State of Delaware a description of their roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies. The provider shall disclose its process for responding to subpoenas, service of process, and other legal requests.</p>	
8	T&C	<p>In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware assets and the subsequent secure disposal of State of Delaware assets.</p> <p><b>Suspension of services:</b> During any period of suspension, the Service Provider will not take any action to intentionally erase any State of Delaware Data.</p> <p><b>Termination of any services or agreement in entirety:</b> In the event of termination of any services or agreement in entirety, the Service Provider will not take any action to intentionally erase any State of Delaware Data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware Data and shall thereafter, unless legally prohibited, delete all State of Delaware Data in its systems or otherwise in its possession or under its control.</p>	

		<b>Post-Termination Assistance:</b> The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.	
9	T&C	The Service Provider shall: 1. Ensure that State information is protected with reasonable security measures, 2. Promote and maintain among the Service Provider's employees and agents an awareness of the security needs of the State's information, 3. Safeguard the confidentiality, integrity, and availability of State information, 4. Ensure that appropriate security measures are put in place to protect the Service Provider's internal systems from intrusions and other attacks.	
10	T&C	The Service Provider shall not utilize any staff (including sub-contractors) to fulfill the obligations of the contract who has been convicted of a felony or class A misdemeanor.	
11	T&C	The Service Provider will make the State of Delaware's data and processes available to third parties only with the express written permission of the State.	
12	T&C	The Service Provider will not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues or (iii) at State of Delaware's written request.	
		<b>SOW</b>	
1	SOW	The Service Provider must allow the State of Delaware access to system logs, latency statistics, etc. that affect its data and or processes.	
2	SOW	The Service Provider must allow the State of Delaware to audit conformance to the contract terms and test for vulnerabilities. The State of Delaware may perform this audit or contract with a third party at its discretion.	
3	SOW	Advance notice (to be determined at contract time) must be given to the State of Delaware of any major upgrades or system changes that the Service Provider will be performing. The State of Delaware reserves the right to defer these changes if desired.	
4	SOW	The Service Provider shall disclose its security processes and technical limitations to the State of Delaware such that adequate protection and flexibility can be attained between the State of Delaware's and the Service Provider. An example might be virus checking and port sniffing – the State of Delaware and the Service Provider must understand each other's roles and responsibilities.	
5	SOW	The Service Provider will cover the costs of response and recovery from a data breach. The State will expect to recover all breach costs from the provider.	
6	SOW	The State of Delaware will provide requirements to Service Provider for encryption of the data at rest	
7	SOW	The Service Provider shall have robust compartmentalization of job duties, perform background checks, require/enforce non-disclosure agreements, and limit staff knowledge of customer data to that which is absolutely needed to perform job duties.	
8	SOW	The Service Provider will provide documentation of internal and external security controls, and their compliance level to industry standards.	
9	SOW	The State of Delaware and the provider shall identify a collaborative governance structure as part of the design and development of service delivery and service agreements.	
10	SOW	The State of Delaware must have the ability to import or export data in piecemeal or in its entirety at its discretion without interference from the Service Provider.	
11	SOW	The Service Provider will be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Service Provider. The environment and/or applications must be available on a 24 hours per day, 365 days per year basis, providing around- the- clock service to customers as defined in this RFP.	
12	SOW	The web portal hosting site environment shall include redundant power, fire suppression, and 24 hours per day, 365 days per year on- site security. The hosting environment shall include redundant Internet connectivity, redundant firewalls, Virtual Private Network	

		(VPN) services, secured remote access methods, fault tolerant internal network with gigabit Ethernet backbone, clustered central file and database servers, load balanced, application, and web servers, hardware, accelerator, three tier development environment, nightly backups, and 24x365 monitoring of all services and servers.	
13	SOW	The Service Provider shall identify all of its strategic business partners who will be involved in any application development and/or operations.	
14	SOW	The State shall have the right at any time to require that the Service Provider remove from interaction with State any Service Provider representative who the State believes is detrimental to its working relationship with the Service Provider. The State will provide the Service Provider with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Service Provider shall immediately remove such individual. The Service Provider shall not assign the person to any aspect of the contract or future work orders without the State's consent.	
15	SOW	The Service Provider will ensure the State of Delaware's Recovery Time Objectives (RTOs) is met.	
16	SOW	The Service Provider will provide evidence that their Business Continuity Program is certified and mapped to the international BS 259999 standard.	
17	SOW	The Service Provider shall ensure that State of Delaware backed-up data is not commingled with other cloud service customer data.	
18	SOW	<b>SLA/SOW - Return of Customer Data/Unique Post Termination:</b> The Service Provider shall make available to the State all Customer Data in a state defined format based on vendor and state platforms including: Database, O/S and physical media, along with attachments in their native format.	
19	SOW	Service Providers shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Master Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available at: <a href="http://www.DTI.Delaware.gov">www.DTI.Delaware.gov</a>	
20	SOW	The Master Contractor may deliver two copies of each software source code and software source code documentation to a State- approved escrow agent with the State's prior approval. The Master Contractor shall cause the escrow agent to place the software source code in the escrow agent's vaulted location, in Delaware, and that is acceptable to the State. Two copies of the source code shall be stored on compact discs or other media designated by the State in a format acceptable to the State, and shall be easily readable and understandable by functional analysts and technical personnel with the skill set for that type of component, subcomponent, or software code.	

**Network Diagram Template**  
**For Hosted / Outsourced Solutions**





This document is also available at the following URL:

<http://dti.delaware.gov/pdfs/pp/RFPRequirementsforSubmissionofaDataDictionaryorDataModel.pdf>

## Requirements for Submission of a Data Dictionary or Data Model

The State of Delaware Data Governance Council was established in January 2012 to put a greater focus on the management and governance of data within the state. The state recognizes that data is an enterprise asset that can be leveraged and managed to allow the state government to operate more efficiently and effectively. In order to achieve this, a clear understanding must be obtained of all of the data owned by the state. Therefore, a data dictionary or data model must be submitted for all applications developed, procured, or utilized by the state.

At a minimum, a data dictionary OR a conceptual data model for state-owned business data must be submitted for the project approval process. The data dictionary or conceptual data model does not have to be submitted with a vendor response to an RFP, but must be submitted once the design of the solution is complete or prior to implementation of the solution. The submitted data dictionary or conceptual data model must adhere to the below requirements.

**The data dictionary or data model must include at least the following items:**

- **Entity names and descriptions**
- **Entity relationships and descriptions**
- **Attribute names, descriptions, data type, and length**
- **Primary identifier for each entity**

The data dictionary must be submitted in Excel or in a .csv file. The directions for how to format the Excel workbook is explained in the first section of the [Data Model Samples document](#). If a data model is submitted, it must be in either Sybase PowerDesigner or CA ERwin format.

To protect the proprietary information of vendor solutions the information submitted only needs to contain the core objects that house state-owned business data. Examples of core state-owned business data are citizen, address, company, etc. The submitted data dictionary or conceptual data model does not need to include objects for the data that is not owned by the state. Examples of non-state data are the objects that exist to maintain the database or control the inner workings of the application. To further protect the proprietary information about the database, the data dictionary or conceptual data model is not expected to have the actual physical object names.

The data models/dictionaries are stored in a secure repository where only the agency who is the steward of the data, the DTI Data Management Team, and the Data Governance Council can access the information for purposes of data governance. The data models/dictionaries will only be shared with others if approved by the data steward.

Following is more information regarding the preparation of a data dictionary or a data model for submission.

### Data Dictionary Overview

A data dictionary contains information about the components of a data repository. The components are the tables, attributes, and their relationships. The details of each include:

- Descriptions for tables (also known as entities), attributes (also known as columns), and relationships.
- The attributes that make up a table.
- The format and length of attributes.
- Indicates if the attribute is a key identifier to the table.
- The type of relationship between the tables.

The data dictionary can be submitted as an Excel workbook or in multiple .csv files. The .csv files will need to be individual files where the following directions indicate a worksheet within an Excel workbook. The .csv files need to be comma delimited with text in quotes.

For examples, please see the [Data Model Samples - Section A](#).

## Data Modeling Overview

A database is a repository of information, a house of data. The data model is to the database what blue prints are to a house. The data architect performs similar functions as the building architect working with clients to define needs and usage. Data models are key for understanding the data a business uses, how it is organized, how it is governed, how the data can be shared, and how the data is housed.

A data model is more than just a diagram portraying tables and columns. The data model:

- Defines the tables in the database.
- How the tables will be connected (relationships).
- What data elements (columns) are in each table.
- The format and size of each attribute.
- The key attribute (usually the unique identifier) for each table. The columns are also known as attributes because they are describing something about the table.
- There are definitions for the model, tables, attributes, and relationships.

All of this information is pertinent to understanding the data and is required in the data model. Additional information that is helpful but not necessary is the data classification, the data steward name (this could be an individual or group), and rules that govern the sharing of the data.

Data models range from small simplistic views of a business to extensive in depth physical implementations. There are three types of data models each building from the other. The first is the conceptual model which organizes the way a business uses its data. Next is the logical model which expands on the conceptual to begin modifying the structure to the requirements of an application. Both the conceptual and logical models are technology independent. The third model is the physical model which is the actual implementation of the data objects designed for performance and based upon a specific technology.

Below are further explanations for each type of data model and some of the types of changes that occur between the models. Though it is typical to start with the conceptual and work through to the physical, you can start with any of the model types and then create the other types of models.

### Conceptual Data Model

The Conceptual Data Model describes data requirements from a business point of view without the burden of technical details. Models at this level are about understanding the data requirements of the business.

The conceptual model is started by documenting the main entities or subject areas. Then identify how they relate based upon business rules and processes. You add the attributes which sometimes causes changes in the relationships or the defining of more entities. Lastly you indicate the identifying attribute(s) which creates the uniqueness of a record within an entity. As you create the model you should be documenting the definitions of the tables, relationships, and attributes. This is the early stages so you may not know all of what is to be captured. This is a starting point to know what base attributes are needed.

Conceptual models are independent of technology. They can be used where understanding the data used by a business is needed. They do not need to be drawn just for relational databases. They can be built for non-relational systems like ADABAS and Lotus Notes to better understand what data the business uses and how it uses it.

Documenting the subject areas, their relationships, the data elements, and key identifiers are beneficial even at the RFP stage. The conceptual data model can be used to evaluate if a vendor's product can meet your business needs for data or help determine if you need to change how you use your data.

For a sample conceptual model, please see the [Data Model Samples - Section B.](#)

#### Logical Data Model

The Logical Data Model refines the conceptual model by modifying the entities, their attributes and their relationships in consideration of an application design. These models are technology independent.

The logical model builds on the conceptual model. Primary and foreign keys are generated for each table. The primary key guarantees the uniqueness of a record. The foreign key creates the relationship between two tables. The conceptual tables are normalized to:

- Eliminate redundancies in the database so that data is captured only once.
- A single compound attribute (such as name) will be expanded to individual columns (such as first name, middle name, last name).
- Verify that every attribute in a record has a direct relation to the primary key for that table and not to another table.

For a sample logical model, please see the [Data Model Samples - Section C.](#)

#### Physical Data Model

The Physical Data Model represents the detailed specification of what is physically implemented using specific technology. Physical design considerations include performance, size and growth, availability, recovery from failure, and use of specific technology features.

The physical data model is tied to technology. When it is generated you select the type of database. The code generated is specific to the database type.

The physical data model includes objects to manage the data or improve database performance This may include user views, alternate table indexes, table partitioning, business rules applied to attributes, triggers, stored procedures, and security.

For a sample logical model, please see the [Data Model Samples - Section D.](#)

**APPENDIX A**  
**GSS13689-LEARN\_MGT**

**Functional Requirements**

Appendix A is a separate document that contains detailed technical specifications in a checklist format and is to be included with the vendor's proposal submission. Narrative explanations are encouraged and can be included separately referencing the specifications as appropriate. The appendix can be found at <http://bids.delaware.gov>. Appendix A is a portion of the total submission and is numbered in accordance with the Mandatory Submission Requirements and format identified in Appendix 12.

- Section A-1: Executive Summary (Narrative provided in respondent's chosen format)
- Section A-2: Experience & Reputation (Narrative provided in respondent's chosen format)
- Section A-3: Support and Maintenance
- Section A-4: LMS Functional Training Requirements
- Section A-5: Implementation Plan
- Section A-6: Reliability and Security Processes
- Section A-7: Data Handling

**APPENDIX B**  
**GSS13689-LEARN\_MGT**

**Pricing Spreadsheet**

Appendix B is a separate pricing spreadsheet to be included with the vendor's proposal submission. The document can be found at <http://bids.delaware.gov>. Cost proposal must also include details on pricing for external learners as a separate document.

**APPENDIX C**  
**GSS13689-LEARN\_MGT**

**Sample Professional Services Agreement**

Appendix C is included with this RFP and provides bidders with an opportunity to review the Professional Services Agreement that will be executed between the awarded vendor(s) and the State.

Appendix C **should not** be included in a respondent's proposal.

Any exceptions a respondent may have to Appendix C must be listed on Attachment 3 of the RFP. Attachment 3 must be included in the respondent's proposal. Exceptions not listed on Attachment 3 will not be considered at any point in the evaluation or award process.

**APPENDIX C**  
**GSS13689-LEARN\_MGT**  
**LEARNING MANAGEMENT SYSTEM**

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**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

This Agreement (Agreement) is entered into as of \_\_\_\_\_, 20\_\_ (Effective Date) and will end on \_\_\_\_\_, 20\_\_, by and between the State of Delaware, Department of \_\_\_\_\_, Division of \_\_\_\_\_, \_\_\_\_\_ ("Delaware"), and VENDOR NAME, a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_.

WHEREAS, Delaware desires to obtain certain services to \_\_\_\_\_; and \_\_\_\_\_.

WHEREAS, VENDOR NAME desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and VENDOR NAME represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and VENDOR NAME agree as follows:

**1. Services.**

- 1.1. VENDOR NAME shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals; and (c) VENDOR NAME's response to the request for proposals, attached hereto as Exhibit 1. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VENDOR NAME shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify VENDOR NAME, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR NAME for any aspect of its

performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

- 1.4. VENDOR NAME will not be required to make changes to its scope of work that result in VENDOR NAME's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## 2. **Payment for Services and Expenses.**

- 2.1. The term of the initial contract shall be from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_\_\_.
- 2.2. Delaware will pay VENDOR NAME for the performance of services described in Appendix \_\_\_\_, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix \_\_\_\_.
- 2.3. Delaware's obligation to pay VENDOR NAME for the performance of services described in Appendix \_\_\_\_, Statement of Work will not exceed the negotiated price structure included in Appendix \_\_\_\_\_. It is expressly understood that the work defined in the appendices to this Agreement must be completed by VENDOR NAME and it shall be VENDOR NAME's responsibility to ensure that all services are completed for the agreed upon price structure. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to VENDOR NAME.
- 2.4. VENDOR NAME shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VENDOR NAME a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle VENDOR NAME to charge interest on the overdue portion at the lower rate of 1.0% per month. All payments should be sent to VENDOR NAME, VENDOR ADDRESS.
- 2.5. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by VENDOR NAME. If an Appendix specifically provides for expense reimbursement, VENDOR NAME shall be reimbursed only for reasonable expenses incurred by VENDOR NAME in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.6. Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

- 2.7. Delaware shall subtract from any payment made to VENDOR NAME all damages, costs and expenses caused by VENDOR NAME's negligence, resulting from or arising out of errors or omissions in VENDOR NAME's work products, which have not been previously paid to VENDOR NAME.
- 2.8. Invoices shall be submitted to the address provided by the ordering agency.

### 3. Responsibilities of VENDOR NAME.

- 3.1.
  - a. VENDOR NAME shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by VENDOR NAME, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, VENDOR NAME shall follow practices consistent with generally accepted professional and technical standards.
  - b. Where applicable, VENDOR NAME shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, VENDOR NAME shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. VENDOR NAME shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR NAME's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of VENDOR NAME to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. VENDOR NAME will not produce a work product that violates or infringes on any copyright or patent rights. VENDOR NAME shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by VENDOR NAME shall not in any way relieve VENDOR NAME of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of VENDOR NAME's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR NAME shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR NAME's performance or failure to perform under this Agreement.
- 3.4. VENDOR NAME shall appoint a Primary Contact who will have authority within VENDOR NAME to ensure the performance of all services specified by this Agreement. The Primary Contact will be:

Name

Title

- 3.5. Designation of Primary Contact is subject to review and approval by Delaware. Upon receipt of written notice from Delaware that the Primary Contact is unsuitable to Delaware for good cause, VENDOR NAME shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
- 3.6. VENDOR NAME shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. VENDOR NAME agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. VENDOR NAME has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. VENDOR NAME will not use Delaware's name, either expressly or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### 4. **Time Schedule.**

- 4.1. Delaware reserves the right to identify specific time schedules for the services specified by this agreement provided the schedules are reasonable to the nature of the services as established by the prevailing market for the services. Such time requirements will be clearly identified in purchase orders issued to VENDOR NAME.
- 4.2. Any delay of services or change in sequence of tasks must be approved in writing by Delaware.
- 4.3. In the event that VENDOR NAME fails to complete the services within the time specified in the purchase order, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix \_\_\_ of this Agreement and /or in the purchase order(s) issued through this Agreement

#### 5. **State Responsibilities.**

- 5.1. In connection with VENDOR NAME's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

- 5.2. Delaware agrees that its officers and employees will cooperate with VENDOR NAME in the performance of services under this Agreement and will be available for consultation with VENDOR NAME at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by VENDOR NAME under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VENDOR NAME by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to VENDOR NAME. It is understood that Delaware's representatives' review comments do not relieve VENDOR NAME from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.
- 5.5. Delaware shall, without charge, furnish to or make available for examination or use by VENDOR NAME as it may request, any data which Delaware has available, including as examples only and not as a limitation:
  - a. Copies of reports, surveys, records, and other pertinent documents;
  - b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

VENDOR NAME shall return any original data provided by Delaware.

- 5.6. Delaware shall assist VENDOR NAME in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.
- 5.7. VENDOR NAME will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.8. Delaware agrees not to use VENDOR NAME's name, either expressly or implied, in any of its advertising or sales materials. VENDOR NAME reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

## 6. Work Product.

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by VENDOR NAME for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of

this Agreement, whichever comes first. VENDOR NAME shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

- 6.2. VENDOR NAME retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VENDOR NAME retains title, whether individually by VENDOR NAME or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.
- 6.3. In no event shall VENDOR NAME be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VENDOR NAME shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.
- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR NAME prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR NAME even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **7. Confidential Information.**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

- 8.1. VENDOR NAME warrants that its services will be performed in a good and professional manner. VENDOR NAME agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.
- 8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by VENDOR NAME for Delaware in connection with the provision of the Services, VENDOR NAME

shall pass through or assign to Delaware the rights VENDOR NAME obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

## 9. Indemnification; Limitation of Liability.

- 9.1. VENDOR NAME shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:
- a. the negligence or other wrongful conduct of the VENDOR NAME, its agents or employees, or
  - b. VENDOR NAME's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that
    - i. VENDOR NAME shall have been notified promptly in writing by Delaware of any notice of such claim; and
    - ii. VENDOR NAME shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.
- 9.2. If Delaware promptly notifies VENDOR NAME in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, VENDOR NAME will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR NAME will not indemnify Delaware, however, if the claim of infringement is caused by:
- a. Delaware's misuse or modification of the Deliverable;
  - b. Delaware's failure to use corrections or enhancements made available by VENDOR NAME;
  - c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by VENDOR NAME;
  - d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable; or
  - e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR NAME's opinion is likely to be, held to be infringing, VENDOR NAME shall at its expense and option either
    - i. Procure the right for Delaware to continue using it,
    - ii. Replace it with a non-infringing equivalent,
    - iii. Modify it to make it non-infringing.

The foregoing remedies constitute Delaware's sole and exclusive remedies and VENDOR NAME's entire liability with respect to infringement.

- 9.3. Delaware agrees that VENDOR NAME's total liability to Delaware is for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or VENDOR NAME's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to VENDOR NAME.

In no event shall VENDOR NAME be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if VENDOR NAME has been advised of the likelihood of such damages.

#### **10. Employees.**

- 10.1. VENDOR NAME has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VENDOR NAME in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- 10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.
- 10.3. Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of VENDOR NAME who will be assigned to this project.

#### **11. Independent Contractor.**

- 11.1. It is understood that in the performance of the services herein provided for, VENDOR NAME shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR NAME shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

- 11.2. VENDOR NAME acknowledges that VENDOR NAME and any subcontractors, agents or employees employed by VENDOR NAME shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.
- 11.3. VENDOR NAME shall be responsible for providing liability insurance for its personnel.
- 11.4. As an independent contractor, VENDOR NAME has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose.

## **12. Suspension.**

- 12.1. Delaware may suspend performance by VENDOR NAME under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to VENDOR NAME at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay VENDOR NAME its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. VENDOR NAME shall not perform further work under this Agreement after the effective date of suspension. VENDOR NAME shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.
- 12.2. In the event Delaware suspends performance by VENDOR NAME for any cause other than the error or omission of the VENDOR NAME, for an aggregate period in excess of 30 days, VENDOR NAME shall be entitled to an equitable adjustment of the compensation payable to VENDOR NAME under this Agreement to reimburse VENDOR NAME for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

## **13. Termination.**

- 13.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
  - a. Not less than 30 calendar days written notice of intent to terminate; and
  - b. An opportunity for consultation with the terminating party prior to termination.
- 13.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after VENDOR NAME is given:
  - a. Not less than 30 calendar days written notice of intent to terminate; and

- b. An opportunity for consultation with Delaware prior to termination.
- 13.3. If termination for default is effected by Delaware, Delaware will pay VENDOR NAME that portion of the compensation which has been earned as of the effective date of termination, but:
- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
  - b. Any payment due to VENDOR NAME at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of VENDOR NAME's default.
  - c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VENDOR NAME shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of VENDOR NAME assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.
- 13.4. Upon receipt of notice of termination of this Agreement, the Vendor shall provide timely, accurate records and materials to the State, and make personnel available to answer questions that arise, and otherwise cooperating with the Office of Management and Budget's reasonable requests in compliance with item eight of Attachment 12 – Terms and Conditions for Cloud Providers.
- 13.5. If after termination for failure of VENDOR NAME to fulfill contractual obligations it is determined that VENDOR NAME has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.
- 13.6. The rights and remedies of Delaware and VENDOR NAME provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.7. Gratuities.
- a. Delaware may, by written notice to VENDOR NAME, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR NAME or any agent or representative of VENDOR NAME to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
  - b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against VENDOR NAME it could pursue in the event of a breach of this Agreement by VENDOR NAME.

- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

#### **15. Assignment; Subcontracts.**

- 15.1. Any attempt by VENDOR NAME to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- 15.2. Services specified by this Agreement shall not be subcontracted by VENDOR NAME, without prior written approval of Delaware.
- 15.3. Approval by Delaware of VENDOR NAME's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve VENDOR NAME of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 15.4. VENDOR NAME shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by VENDOR NAME, its subcontractor or its sub-subcontractor.
- 15.5. The compensation due shall not be affected by Delaware's approval of the VENDOR NAME's request to subcontract.

#### **16. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

#### **17. Non-Appropriation of Funds.**

- 17.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

#### **18. State of Delaware Business License.**

VENDOR NAME and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* ' 2502.

#### **19. Complete Agreement.**

- 19.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and VENDOR NAME with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 19.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 19.3. VENDOR NAME may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

#### **20. Miscellaneous Provisions.**

- 20.1. In performance of this Agreement, VENDOR NAME shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. VENDOR NAME shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 20.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 20.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to

enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

- 20.4. VENDOR NAME covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR NAME further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- 20.5. VENDOR NAME acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR NAME recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare VENDOR NAME in breach of the Agreement, terminate the Agreement, and designate VENDOR NAME as non-responsible.
- 20.6. VENDOR NAME warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 20.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 20.8. VENDOR NAME shall maintain all public records, as defined by 29 *Del. C.* ' 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit VENDOR NAME's performance and records pertaining to this Agreement at the VENDOR NAME business office during normal business hours.

## 21. Insurance.

- 21.1. VENDOR NAME shall maintain the following insurance during the term of this Agreement:
  - a. Workers' Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
  - b. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
  - c. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence;  
or

- d. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- e. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- f. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. VENDOR NAME shall provide forty-five (45) days' written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, VENDOR NAME hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. VENDOR NAME consents to jurisdiction venue in the State of Delaware.

**24. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

DELAWARE:  
 (Agency contact address) \_\_\_\_\_

VENDOR:  
 (Vendor contact address) \_\_\_\_\_

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE**  
**DEPARTMENT OF \_\_\_\_\_**

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**VENDOR NAME**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

